

DISTRICT OF MAINE

Docket No. 01-73-P-DMC

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securing the amount owed, as distinct from defending against the counterclaims raised by the defendants. *Id.* at 2.

The authority cited by the defendants does not support their position. In *Marcial Ucin, S.A. v. SS Galicia*, 723 F.2d 994, 1002 (1st Cir. 1983), attorney fees were not requested in the trial court and the First Circuit merely noted that no miscarriage of justice would result from the denial of such a request by the appellate court “in view of the fact that no statutory authorization is provided for the award of attorney’s fees to a party prevailing in a suit based upon Carriage of Goods by Sea Act.” In *Coastal Fuels Mktg., Inc. v. Florida Express Shipping Co.*, 207 F.3d 1247, 1250 (11th Cir. 2000), the court observed only that attorney fees are not available in an admiralty case “unless fees are statutorily or contractually authorized.” In this case, the contractual language, reasonably construed under the circumstances, authorizes recovery of attorney fees. *See Windmoeller & Hoelscher Corp. v. S/S “Nurnberg Atlantic,”* 1995 WL 479495 (S.D. N.Y. Aug. 10, 1995), at *2-*3. Courts have often assumed that the term “legal costs” includes attorney fees. *E.g., Leonardis v. Burns Int’l Sec. Servs., Inc.*, 808 F. Supp. 1165, 1176 (D. N.J. 1992). Nothing in the record of this case suggests that either party had in mind a definition of this term limited to court costs and excluding attorney fees. The term “legal costs,” when not otherwise defined or limited in a contractual agreement, may reasonably be construed to include attorney fees.

The defendants’ counterclaims alleged breach of the contract; breach of warranties of workmanlike performance, merchantability and fitness for a particular purpose; deceptive trade practices; and misrepresentation. Defendants’ Answer, Affirmative Defenses and Counterclaim (Docket No. 11) at 3-6. As a practical matter, success on any of these claims would have barred or eliminated any recovery by the plaintiff on his claim, making any attorney fees incurred in defense of

those counterclaims “costs incurred in securing the amount owed.” The plaintiff is accordingly entitled to recover all reasonable attorney fees requested.

The defendants also argue in conclusory fashion that “Plaintiff’s Application for fees far exceeds the amount reasonable and actually incurred in securing the amount owed.” Objection at 2. However, the defendants identify no portion or aspect of the application which they contend is excessive or otherwise unreasonable. In the absence of any specification of allegedly excessive hours or rates and any supporting argument, this court can only deem the argument waived. *See generally Business Credit Leasing, Inc. v. City of Biddeford*, 770 F. Supp. 31, 34 n.4 (D. Me. 1991). *See also United States v. Eleven Vehicles, Their Equip. & Accessories*, 200 F.3d 203, 211-12 (3d Cir. 2000).

Finally, to the extent that the defendants’ objection may be construed to seek amendment of some portion of my findings of fact and conclusions of law, that motion is denied.

The defendants’ application for attorney fees in the amount of \$9,489.08 is hereby **GRANTED**.

Dated this 28th day of March 2002.

David M. Cohen
United States Magistrate Judge

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